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March 17, 2025

VIA ECF

Hon. Alvin K. Hellerstein
 United States District Court
 Southern District of New York
 500 Pearl Street
 New York, NY 10007

Re: United States v. Charlie Javice and Olivier Amar, 23 Cr. 251 (AKH)

Dear Judge Hellerstein:

During the morning of March 17, 2025, Ms. Javice and the government stipulated to the admission of GX 2023 and GX 2024. These records are certificates of insurance from the Federal Deposit Insurance Corporation for JP Morgan Chase Bank, NA and Capital One, NA. Shortly thereafter, within the presence of the jury, the Court engaged in the following colloquy:

6	THE COURT: What did we learn from these two exhibits?
7	MS. KOSTOPOULOS: Your Honor, these are just FDIC
8	records that are related to JPMorgan Chase's status. This is
9	one of the legal elements that the government is required to
10	prove.
11	THE COURT: That Chase is a national bank?
12	MS. KOSTOPOULOS: Exactly. And so these are the
13	records that satisfy that requirement.
14	THE COURT: Okay. Chase is a national bank.

03/17/2025 Trial Tr. 2362:6-14.

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This improperly lessens the government's burden to establish the elements of bank fraud. 18 U.S.C. § 1344. The government must present "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the accused] is charged." *In re Winship*, 397 U.S. 358, 364–65 (1970). A stipulation does not establish as a matter of law that "Chase is a national bank." A stipulation is merely "'evidence introduced by both of the parties,' so neither may 'complain on appeal that the evidence was erroneously admitted.'" *United States v. Smith*, 632 F.3d 1043, 1047 (8th Cir. 2011) (citation omitted). "[E]ven where there is a stipulation to the elemental facts," under the Sixth Amendment, "it is still the Government's burden to prove each element of the offense and, likewise, generally the jury must make a finding as to each element." *United States v. Ray*, 803 F.3d 244, 259 (6th Cir. 2015). The failure to properly instruct the jury as to the government's burden is a structural error, mandating reversal. *See Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993) (addressing whether a constitutionally-deficient reasonable-doubt instruction may be harmless error).

Ms. Javice respectfully requests that the Court give the jury the following curative instruction:

The government has the burden to show guilt beyond a reasonable doubt to each and every element of the crime. A stipulation is evidence, just like any other. The jury may accept it, reject it, or give it any weight it deems appropriate based on its experience and the other circumstances of the case.

Adapted from *United States v. Hwang*, 22-cr-240, ECF No. 313, July 9, 2024, Trial Tr. 5408:24–5409:5.

Regardless of the parties' stipulations as to particular facts, instructing the jury to find any element of a charged offense is a fundamental constitutional violation. *See United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572–573 (1977) ("[A] trial judge is prohibited from entering a judgment of conviction or directing the jury to come forward with such a verdict . . . regardless of how overwhelmingly the evidence may point in that direction."). For these reasons, Ms. Javice respectfully requests the Court give the jury a curative instruction that, regardless of stipulations, the government must prove each element of the charged offenses beyond a reasonable doubt.

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Respectfully submitted,

/s/ Kirsten R. Nelson
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cc: All Counsel of Record